

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
MARK A. LIDIKAY)	File No. 0003959495
Industrial/Business Pool Station WQLC474)	
)	
and)	
)	
ZEREP MANAGEMENT CORPORATION)	File No. 0004042455
Industrial/Business Pool Station WQLC437)	

ORDER ON RECONSIDERATION

Adopted: November 8, 2010**Released: November 9, 2010**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On January 4, 2010, Comm Enterprises, LLC and MS Airwaves, Inc. (Petitioners) sought reconsideration of the grant of the above-captioned applications filed by Mark A. Lidikay (Lidikay)¹ and Zerep Management Corporation (Zerep)² for authority to operate new trunked Industrial/Business Pool stations.³ For the reasons set forth below, we deny the petitions for reconsideration.

2. *Background.* In 1997, the Commission directed the certified frequency coordinators for the private land mobile radio services to reach a consensus on the applicable coordination procedures for the 12.5 kHz “offset” channels in the 470-512 MHz frequency band.⁴ That consensus is embodied in the Land Mobile Communications Council (LMCC) procedures for evaluating adjacent channel interference in the 470-512 MHz band using the interference criteria of TIA/EIA/TSB-88 (TSB-88).⁵ The LMCC Consensus provides that an application shall not be certified if either the applicant or an overlapping incumbent has

¹ FCC File No. 0003959495 (filed Sept. 9, 2009; amended Oct. 22 and Nov. 27, 2009).

² FCC File No. 0004042455 (filed Nov. 24, 2009).

³ Petitioners jointly filed two petitions for reconsideration, one for each application. The petitions are identical, except for details pertaining to the particular applications. See Petitions for Reconsideration (filed Jan. 4, 2010) (Petitions). Lidikay and Zerep each filed an opposition. See Lidikay Opposition to Petition for Reconsideration (filed Jan. 20, 2010); Zerep Opposition to Petition for Reconsideration (filed Jan. 20, 2010). Petitioners filed substantially identical replies. See Replies (filed Feb. 12, 2010) (Replies).

⁴ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997).

⁵ See Filing Freeze to be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (*Bureau Public Notice*) (citing Letter from Larry A. Miller, President, LMCC, to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)). TSB-88 is a technical bulletin describing a methodology for predicting coverage and interference for PLMR stations operating below 512 MHz. In general, TSB-88 methodology is used by frequency coordinators and others to determine channel availability based on predicted contours, *i.e.*, TSB-88 is used to ensure that the predicted interference contour of a proposed station does not impinge on the service contours of other stations. See State of Maryland, *Memorandum Opinion and Order*, 21 FCC Rcd 11939, 11941 ¶ 6 (PSHSB 2006).

unacceptable interference of more than five percent reduction of the calculated service area reliability.⁶ After LMCC announced the consensus, the Wireless Telecommunications Bureau lifted the freeze on 470-512 MHz band 12.5 kHz offset channels that it had imposed until the frequency coordinators developed procedures for coordinating new assignments.⁷

3. On September 9 and November 24, 2009, respectively, Lidikay and Zerep filed applications for authority to operate in the Los Angeles, California area on 470-512 MHz band 12.5 kHz offset channels with an authorized bandwidth of 6 kHz⁸ and an occupied bandwidth of 4 kHz (*i.e.*, with an emission designator of 4K00F3E⁹). The applications were granted on December 2, 2009, under call signs WQLC474 and WQLC437, respectively. On January 4, 2010, Petitioners filed petitions for reconsideration of the grants, arguing that the operations proposed in the applications did not satisfy the TSB-88 criteria.¹⁰ Consequently, Petitioners requested that the Commission reconsider and set aside the grant of the applications.¹¹

4. *Discussion.* An application to operate on 470-512 MHz band 12.5 kHz offset channels must satisfy the TSB-88 only when there is spectral overlap between the proposed and incumbent operations.¹² Petitioners argue that operation with a 6 kHz authorized bandwidth on a frequency 12.5 kHz removed from the center frequency of Petitioners' operations with 20 kHz authorized bandwidth results in spectral overlap.¹³ Lidikay and Zerep argue that operation of equipment with 4 kHz occupied bandwidth on a frequency 12.5 kHz removed from the center frequency of Petitioners' operations with 20 kHz occupied bandwidth (*i.e.*, with an emission designator of 20K0F3E) does not result in spectral overlap. Thus, the issue is whether, for purposes of determining whether these applications present spectral overlap that requires a TSB-88 analysis, the comparison should be to the authorized bandwidth or the occupied bandwidth.

5. At the request of the Mobility Division (Division),¹⁴ LMCC confirmed that a TSB-88 analysis is not required under the circumstances presented:

We hereby confirm to you that LMCC has concluded that a TSB-88 analysis is not required for applications to use narrowband equipment with a 4 kHz occupied bandwidth on frequencies 12.5 kHz offset from a 25 kHz incumbent, because there is no spectral overlap under those circumstances. [¶] It is LMCC's position that a licensee can only utilize the bandwidth authorized by the emission designator on the license. For a 25 kHz channel, the maximum authorized occupied bandwidth cannot exceed 20 kHz. For the current variety of very narrowband equipment, that is 4 kHz. Thus, . . . there is no

⁶ See LMCC Consensus, Attachment at 2.

⁷ See *Bureau Public Notice*, 13 FCC Rcd at 5942.

⁸ See 47 C.F.R. § 90.209(b)(5).

⁹ The emission designator is a series of alphanumeric characters that denotes the necessary bandwidth, type of modulation, nature of the signal modulating the main carrier, and type of information to be transmitted. See 47 C.F.R. §§ 2.201(b), 2.202(b).

¹⁰ See Petitions at 1.

¹¹ *Id.*

¹² See, e.g., National Science and Technology Network, Inc., *Memorandum Opinion and Order*, 25 FCC 549, 550-51 ¶ 4 (2010) (*NSTN*).

¹³ See Replies at 1-2.

¹⁴ See Letter dated May 17, 2010, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Kenton Sturdevant, President, Land Mobile Communications Council.

overlapping occupied bandwidth.¹⁵

6. Petitioners contend that this “4 kHz Exemption,” as they refer to it, constitutes a substantive rule change that is invalid because it was not adopted by the Commission pursuant to statutory rulemaking procedures.¹⁶ We disagree. This is not an exemption from the LMCC Consensus, or a new policy. Rather, it is a clarification of the consensus on applicable coordination procedures that the frequency coordinators reached at the Commission’s direction. Moreover, while it never addressed this particular issue, it appears that the Commission already considered occupied bandwidth to be the relevant measure for determining spectral overlap.¹⁷

7. *Conclusion.* We conclude that, under the circumstances presented, there was no spectral overlap requiring a TSB-88 analysis, and the above-captioned applications were properly coordinated. We therefore deny the petitions for reconsideration.

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Petitions for Reconsideration filed on January 4, 2010 by Comm Enterprises, LLC and MS Airwaves, Inc. with respect to applications FCC File Nos. 0003959495 and 0004042455 ARE DENIED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁵ See Letter dated June 9, 2010, from Kenton Sturdevant, President, Land Mobile Communications Council, to Melvin Spann, Mobility Division, Wireless Telecommunications Bureau.

¹⁶ See Replies at 3-7.

¹⁷ See *NSTN*, 25 FCC Rcd at 550-51 ¶ 4 (“NSTN . . . argues that the emission mask reduces the actual bandwidth used for communications such that 12.5 kHz channel stations and 25 kHz channel stations modulate approximately plus or minus 2.5 kHz and 5 kHz, respectively, from the center frequency, and the signal beyond that range is “spurious emissions” not necessary for communications. We disagree. The necessary bandwidth is reflected in the emission mask, rather than in some smaller figure suggested (without support or authority) by NSTN.”) (footnotes omitted).

Petitioners argue that the Division’s decision in *National Science and Technology Network, Inc., Order on Further Reconsideration*, 24 FCC Rcd 3577 (WTB MD 2009), *aff’d*, *Memorandum Opinion and Order*, 25 FCC Rcd 11384 (2010), demonstrates that the spectral overlap analysis should use authorized bandwidth. This is incorrect. As in the *NSTN* matter cited above, the Division rejected the proffered narrower bandwidth because it was narrower than the contemplated occupied bandwidth, not because it was narrower than the contemplated authorized bandwidth. (Any confusion may be due to the fact that the Division referred to occupied bandwidth, but the figure it used reflected authorized bandwidth. Under the circumstances there presented, the difference was immaterial.)